

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

TRAVON McCOY,

Plaintiff,

v.

HAROLD CLARKE, ELDON VAIL and  
JOSEPH LEHMAN,

Defendants.

NO. CV-05-5036-AAM

**ORDER DENYING PLAINTIFF'S  
MOTION FOR SUMMARY JUDGMENT,  
INTER ALIA**

**BEFORE THE COURT** is plaintiff's Motion for Summary Judgment. (Ct. Rec. 10). Plaintiff appears *pro se*. Defendants are employees of the State of Washington, represented by Douglas Carr, Assistant Attorney General for the State of Washington.

**I. BACKGROUND**

Plaintiff is currently incarcerated in Washington pursuant to an Interstate Corrections Compact (Compact) with the State of Maryland. He was transferred to Washington from Maryland in July 2002. He seeks injunctive relief, as well as financial indemnification, for alleged constitutional violations pursuant to 42 U.S.C. §1983.

The Compact authorizes states to enter into contracts with other participating states to transfer and receive inmates for incarceration. RCW 72.74.020 *et seq.* Washington and Maryland entered into a contract in 1990 (MD-WA Contract) which allows Washington to supervise the transferred inmates,

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1 and act as an agent of Maryland. The MD-WA Contract states: "Inmates, while in the custody of the  
2 receiving state, shall be subject to all the provisions of law and regulation applicable to persons  
3 committed for violation of law of the receiving state not inconsistent with the sentence imposed."  
4 (Ct. Rec. 18-2, p. 10).

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6 Plaintiff filed an initial complaint against the Secretary of the Washington State Department of  
7 Corrections (DOC) and the Commissioner of the Maryland Division of Correction on April 5, 2005.  
8 (Ct. Rec. 1). He alleged that following his transfer from Maryland to the Washington prison,  
9 defendant Harold Clarke, then the Secretary of the DOC, began deducting 25 percent of his incoming  
10 funds and five percent of his wages. (Ct. Rec. 1-1, p. 6). The deductions are authorized by the  
11 Washington State legislature (Revised Code of Washington (RCW) 72.09) and are for, *inter alia*,  
12 crime victims' compensation and costs of incarceration.<sup>1</sup>  
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15 On April 21, 2005, this court issued an Order to Amend or Voluntarily Dismiss Complaint.  
16 (Ct. Rec. 6). Plaintiff filed a First Amended Complaint on May 2, 2005. (Ct. Rec. 7). He asserts  
17 RCW 72.09.480 (7) and 72.09.111 (1)(d)(1) are being applied to him in violation of the Eighth and  
18 Fourteenth Amendments of the federal Constitution.  
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20 The court issued an Order Dismissing the First Amended Complaint In Part With Prejudice,  
21 dismissing plaintiff's due process claim regarding his interstate transfer from Maryland. (Ct. Rec. 8).  
22 The court also terminated Frank Sizer, Jr., a resident of the State of Maryland, as a defendant from the  
23 action. *Id.* Whether a Maryland inmate incarcerated in Washington state is subject to deductions  
24 under the Compact, however, was found to be an open question. (Ct. Rec. 8, p. 2).  
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27 <sup>1</sup> RCW 72.09.111 and 72.09.480 require the deduction of certain fees from inmate funds.  
28 Inmates, by definition, include "persons received from another state, state agency, county or federal jurisdiction." RCW 72.09.015 (11). It is undisputed that plaintiff has been paying the challenged fees.

1 In his First Amended Complaint, plaintiff claims the DOC has no rational basis for making  
2 deductions from his funds for costs of incarceration and compensation of crime victims. (Ct. Rec. 7, p.  
3 8). Liberally construing the First Amended Complaint, the court required the Washington defendants  
4 to respond to plaintiff's claim of deprivation of a protected property interest without due process and  
5 they did so.

7 On June 15, 2005, plaintiff filed a Motion for Summary Judgment which appears to seek  
8 summary judgment on all of the claims asserted in his First Amended Complaint which were not  
9 previously dismissed by this court. (Ct. Rec. 10). Plaintiff claims: (1) the defendants' actions violated  
10 his substantive due process rights; (2) there is no rational basis for making deductions from his funds  
11 as authorized by the Washington statutes; (3) the deductions violate the Compact, and thus violate a  
12 property right protected by the Fourteenth Amendment; (4) the defendants failed to enforce the  
13 Compact; and (5) defendants are not entitled to qualified immunity from liability for their various due  
14 process violations. (Ct. Rec. 12). He requests the court enjoin the defendants from taking any more of  
15 his money through the application of RCW 72.09.480(7) and 72.09.111, and order the reimbursement  
16 of his funds.

19 Defendants respond that the deductions do not violate substantive due process as they are duly  
20 authorized by the Washington legislature and are rationally related to the state's financial interests in  
21 paying costs associated with plaintiff's incarceration. (Ct. Rec. 17, p. 5). Defendants also argue that  
22 plaintiff's Interstate Corrections Compact claim is not cognizable under 42 U.S.C. §1983 because the  
23 Compact is not a federal law, and the deduction statutes do not violate procedural due process. *Id.* at  
24 6. They assert an affirmative defense of qualified immunity to damages claim.

## II. DISCUSSION

### A. Summary Judgment Standard

Summary judgment allows the parties to avoid unnecessary trials when there is no dispute as to the facts before the court. Zweig v. Hearst Corp., 521 F.2d 1129 (9<sup>th</sup> Cir. 1975), cert. denied, 423 U.S. 1025, 96 S. Ct. 469 (1975). Summary judgment shall be granted where “there is no genuine issue as to any material fact and . . . the moving party is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(c); British Airways Bd. v. Boeing Co., 585 F.2d 946, 951 (9<sup>th</sup> Cir. 1978). Under Fed. R. Civ. P. 56, a party is entitled to summary judgment where the documentary evidence produced by the parties permits only one conclusion. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 247, 106 S. Ct. 2505 (1986); Semegen v. Weidner, 780 F.2d 727, 732 (9<sup>th</sup> Cir. 1985). The moving party bears the initial burden of informing the court of the basis of its motion and identifying evidence of record it believes demonstrates the absence of “a genuine issue of material fact.” Celotex Corp. v. Catrett, 477 U.S. 317, 323, 106 S. Ct. 2548, 2553 (1986). Rule 56 does not require the moving party to support its motion with affidavits or other documents negating the opponent’s claim. *Id.* If the moving party satisfies its initial burden, Rule 56(e) requires the party opposing the motion to respond by submitting evidentiary materials that designate “specific facts showing that there is a genuine issue for trial.” Matsushita Elec. Indus. Co. Ltd. v. Zenith Radio Corp., 475 U.S. 574, 587 n.11, 106 S. Ct.1348 (1986).

An opponent cannot rest on denials or mere allegations unsupported by factual data or in a pleading. *Id.*; Taylor v. List, 880 F.2d 1040, 1045 (9<sup>th</sup> Cir. 1989). Further, only disputes over facts that might affect the outcome of the case under the applicable law will preclude entry of summary judgment. Factual disputes that are irrelevant will not be counted. Anderson, 477 U.S. at 250. In determining if summary judgment is appropriate, a court must look at the record and any inferences to

1 be drawn from it in the light most favorable to the party opposing the motion. *Id.* at 255. Summary  
 2 judgment is to be granted only where the evidence is such that no reasonable jury could return a  
 3 verdict for the non-moving party. *Id.* at 250. Conversely, any doubt about the existence of any issue  
 4 of material fact requires denial of the motion. *Id.* at 255.  
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## 7 **B. Plaintiff's Section 1983 Claims**

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 9 To state a claim under 42 U.S.C. § 1983, plaintiff must allege a deprivation of a right, privilege  
 10 or immunity secured by the Constitution and the laws of the United States. See Parratt v. Taylor, 451  
 11 U.S. 527, 535, 101 S. Ct. 1908 (1981). Plaintiff asserts that he “has a protected property interest in  
 12 funds received from outside sources.”<sup>2</sup> (Ct. Rec. 7, p. 8). In Wright v. Riveland, 219 F.3d 905, 913  
 13 (9<sup>th</sup> Cir. 2000), the Ninth Circuit held, “[b]ecause inmates have a protectable property interest in funds  
 14 received from outside sources, including those received from federal benefits, the Department’s  
 15 deduction of funds . . . necessitates compliance with due process.” Plaintiff argues Washington’s  
 16 statutes authorizing deductions from inmate funds violates substantive and procedural due process  
 17 guaranteed by the Fourteenth Amendment. (Ct. Rec. 12, p. 3).  
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### 21 **1. Substantive Due Process**

22 Substantive due process claims have been limited generally to “matters relating to marriage,  
 23 family, procreation, and the right to bodily integrity.” Albright v. Oliver, 510 U.S. 266, 272, 114 S. Ct.  
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26 <sup>2</sup> At other times, plaintiff appears to claim a property right created by the Compact. (Ct. Rec.  
 27 20, p. 2). Whether an inmate has a property right created by the Compact has not been decided by the  
 28 Ninth Circuit. See e.g. Portman v. County of Santa Clara, 995 F.2d 898, 907 (9<sup>th</sup> Cir. 1999). The  
 court declines to address this issue in light of the Wright v. Riveland, cited and discussed *infra*.

1 807 (1994). A substantive due process violation occurs when the state actor “violates fundamental  
2 fairness and is action “is shocking to the universal sense of justice.” Hivala v. Wood, 195 F.3d 1098  
3 (9th Cir. 1999) (citation omitted). In order to prove a substantive due process violation, plaintiff must  
4 show defendants’ action (deductions from funds) was “clearly arbitrary and unreasonable, having no  
5 substantial relation to the public health, safety, or morals, or general welfare.” Kawaoka v. City of  
6 Arroya Grande, 17 F.3d 1227, 1234 (9<sup>th</sup> Cir. 1994) (substantive due process claims regarding  
7 government action are reviewed under a rationality standard). Although a legislative action must be  
8 rationally related to a legitimate governmental interest, the court does not require that the  
9 government’s legislative action actually promotes its stated purpose. Rather, the court looks at  
10 whether “the governmental body *could* have had no legitimate reason for its decision.” *Id.* at 1234  
11 (citing Levald v. City of Palm Desert, 998 F.2d 680, 690 (9<sup>th</sup> Cir. 1993). If the legislative action  
12 advances any legitimate public purpose, it must be upheld. *Id.*

16 To support his contention that RCW 72.09 is not rationally related to any government interest,  
17 plaintiff argues that he committed his crime in Maryland and so there are no crime victims in  
18 Washington for him to compensate. The fact, however, that the deducted money does not go directly  
19 to his victims, or to his state (Maryland), does not defeat the legitimate interest Washington has in  
20 assisting crime victims in general, regardless of their states of residence. Indeed, none of the fees  
21 collected from inmates can be said to actually and exclusively go to the specific victims of their  
22 crimes.

25 Plaintiff argues the costs of his incarceration are provided for in the Compact, and he should  
26 not be subject to additional deductions to cover those costs. (Ct. Rec. 7, p. 8; Ct. Rec. 12, p. 3). In  
27 support of his argument that the Compact requires Maryland pay his costs of incarceration, he cites the  
28

below underlined portion of the Compact out of context. (Ct. Rec. 12, p. 4). The relevant section of the Compact, *in toto*, states:

Each party state may make one or more contracts with any one or more of the other party states, or with the federal government, for the confinement of inmates on behalf of a sending state in institutions situated within receiving states. Any such contract shall provide for: (i) Its duration; (ii) Payments to be made to the receiving state or to the federal government, by the sending state for inmate maintenance, extraordinary, medical and dental expenses, and any participation in or receipt by inmates of rehabilitative or correctional services, facilities, programs or treatment not reasonably included as part of normal maintenance; (iii) Participation in programs of inmate employment, if any; the disposition or crediting of any payments received by inmates on account thereof; and the crediting of proceeds from or disposal of any products resulting therefrom; (iv) Delivery and retaking of inmates; (v) Such other matters as may be necessary and appropriate to fix the obligations and responsibilities and rights of the sending and receiving states.

RCW 72.74.020 (3) (a) (emphasis added).

In accordance with the above provision, the MD-WA Contract states at Paragraph 27:

It is intended by both states that the costs to each state of the custody of inmates transferred under the terms of this contract shall be offset through mutual exchange of inmates between the states. Each state shall keep account of the number of inmate days of service provided to inmates transferred from the other state. Except as otherwise specifically provided in this contract, each state shall bear the cost of providing care and custody of the inmate sent to it. Any difference in actual lengths of custody time involved in any one exchange will be resolved through set-offs in subsequent exchange actions.

(Ct. Rec. 18-2, p.13) (emphasis added).

The Compact also states:

All inmates who may be confined in an institution pursuant to the provisions of this compact shall be treated in a reasonable and humane manner, and shall be treated equally with such similar inmates of the receiving state as may be confined in the same institution. The fact of confinement in a receiving state shall not deprive any inmate so confined

1 of any legal rights which said inmate would have had if confined in an  
 2 appropriate institution of the sending state.

3 RCW 72.74.020 (4)(e)

4 Consistent therewith, Paragraph 17 of the MD-WA Contract states: “Inmates, while in the  
 5 custody of the receiving state, shall be subject to all the provisions of law and regulations applicable to  
 6 persons committed for violations of law of the receiving state not inconsistent with the sentence  
 7 imposed.” (Ct. Rec. 18-2, p. 10) (emphasis added). Plaintiff alleges no inconsistency between the  
 8 deductions and the conditions of his Maryland sentence.  
 9

10 The evidence of record does not indicate that the Compact specifies Maryland will pay for  
 11 plaintiff’s incarceration costs. Rather, the Compact authorizes individual states to contract for those  
 12 payments. The MD-WA Contract provides that each state shall bear the cost of providing care and  
 13 custody of the inmate sent to it and that the costs to each state “shall be offset through mutual  
 14 exchange of inmates between the states.”<sup>3</sup> It also gives the receiving state the ability to apply its laws  
 15 to inmates from the sending state to further offset costs. Plaintiff’s argument that the provisions in the  
 16 MD-WA Contract and the Compact are inconsistent is without merit. (Ct. Rec. 20, p. 2-3). On the  
 17 contrary, they complement each other. Washington’s deductions are collected from Maryland inmates,  
 18 just as any deductions authorized by the Maryland legislature could be collected from Washington  
 19 inmates incarcerated in Maryland. Furthermore, by statutory definition, even though plaintiff is from  
 20 Maryland, he is an “inmate” subject to the provisions of RCW 72.09 while he is confined in  
 21 Washington. RCW 72.09.015 (11). As an agent of the state of Maryland, Washington is authorized by  
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26 <sup>3</sup> The court notes that the Maryland State Corrections statute authorizes deductions from an  
 27 inmate’s work-release program earnings for restitution and “an amount the Division determines to be  
 28 the cost to the State for food, lodging and clothing for the inmate,” and child support. MD Ann.Code,  
 Correctional Services, § 3-804 (2005).

1 the Compact and the MD-WA Contract to make deductions from plaintiff's earnings and his other  
2 incoming funds..  
3

## 4 5 **2. Eighth Amendment**

6 Plaintiff includes an Eighth Amendment claim in his First Amended Complaint, although he  
7 does not discuss that specific claim in his summary judgment memoranda. (Ct Rec. 7, p. 7). His stated  
8 basis for this claim is that he has never violated the laws of Washington State, the defendants are only  
9 agents of Maryland for the provision of housing and care, and defendants are liable for "punitively  
10 deducting Plaintiff's funds." *Id.*  
11

12 The Ninth Circuit has held deductions from inmate funds are punitive, and thus fall under the  
13 ambit of the Eighth Amendment; however, it has also held the deductions are not excessive and thus,  
14 do not violate the Eighth Amendment.<sup>4</sup> Wright, 219 F.3d at 918 (once statute was amended to  
15 prohibit deduction in excess of inmates' actual costs of incarceration, the deductions were found not  
16 excessive). Plaintiff does not distinguish his situation from the inmates in Wright, other than to  
17 erroneously assert that his costs are already paid for by Maryland.  
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## 20 21 **3. Procedural Due Process**

22 Although plaintiff includes a procedural due process claim in his First Amended Complaint, he  
23 does not brief the issue in his memoranda. The complaint simply states that plaintiff has a protected  
24 interest in funds received. Plaintiff then alleges his "non-consensual out-of-state transfer" deprived  
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27 <sup>4</sup> The Ninth Circuit declined to follow In re Metcalf, 92 Wash.App. 165, 963 P.2d 911 (1998), a  
28 Washington state case in which the deductions were found remedial, not punitive. Wright, 219 F.3d at 916.

1 him of a protected property interest without due process. (Ct. Rec. 7, p. 8). His memoranda do not  
2 discuss this claim or argue why available post-deprivation remedies are inadequate.

3  
4 To establish a procedural due process claim, plaintiff must allege a constitutionally protected  
5 property interest, deprivation by the government, and lack of due process. Portman, 995 F.2d at 904.  
6 As discussed above, Wright held an inmate has a property interest in his incoming funds. Wright, 219  
7 F.3d at 913. The deprivation is pursuant to a duly authorized legislative action. DOC provides a  
8 grievance process for inmates. Plaintiff provides evidence that he has accessed that grievance process.  
9 (Ct. Rec. 11). This process has been found to be an adequate post-deprivation remedy for  
10 unauthorized deductions. *Id.* at 918 (withdrawals in excess of actual incarceration costs may be  
11 redressed through established prison grievance process and by filing a tort claim in state court).

12  
13 Furthermore, the Washington Court of Appeals has held that RCW 72.09.111 and .480 do not  
14 violate a prisoner's state or federal constitutional right to due process because when a legislative  
15 enactment is challenged, the legislative process provides all the process due. In re Metcalf, 92  
16 Wash.App. 165, 176, 963 P.2d 911 (1998). Inmates have access to a grievance process that allows  
17 meaningful review of the deductions in a situation where pre-deprivation hearings for all the inmates is  
18 impossible. Plaintiff has not alleged that a delay imposes a significant hardship on him. He may  
19 bring a tort action against the State to recover funds illegally deducted. The grievance process and  
20 state law remedies provide adequate post-deprivation due process.

### 21 22 23 24 25 **C. Pendent State Law Claims**

26 Plaintiff appears to argue the Compact gives him the right to not to be subject to the deductions  
27 authorized by the State of Washington. He alleges the deductions violate the terms of the Compact.  
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1 (Ct. Rec. 12, p.6). This claim, however, is not found in his First Amended Complaint.

2 Defendants correctly argue that breach of the Compact or MD-WA Contract is not a federal  
3 issue. (Ct. Rec. 17, p. 6). The Compact is an agreement between two states and does not relate to  
4 federal concerns. Ghana v. Pearce, 159 F.3d 1206, 1208-09 (9<sup>th</sup> Cir. 1998) (Interstate Corrections  
5 Compact procedures are a local concern and there is no federal interest absent some constitutional  
6 violation in the treatment of the prisoners). Plaintiff argues Ghana does not apply because liberty  
7 interests were at issue there. The rule regarding the federal interest in the Compact, however, is still  
8 on point. Thus, if no constitutional violations are found, a breach of contract or tort action arising out  
9 of an alleged violation of the Compact is a not a federal claim. See also Portman, 995 F.2d at 905  
10 (deprivation of a benefit to which one is allegedly entitled under a state contract does not automatically  
11 give rise to a §1983 claim). Here, the undisputed facts, as a matter of law, do not establish any  
12 constitutional violation. Thus, plaintiff's federal claims fail. As plaintiff does not plead state pendent  
13 claims in his First Amended Complaint, such claims are not at issue here. See Sanchez v. City of  
14 Santa Ana, 915 F.2d 424, 439 (9<sup>th</sup> Cir. 1990) (issues raised for the first time in reply brief generally are  
15 not addressed). Furthermore, where there are pendent state claims remaining after federal claims have  
16 been dismissed, this court has the discretion to decline jurisdiction. 28 U.S.C. § 1367(c)(3). Even if  
17 plaintiff had pled state pendent claims, the court would decline jurisdiction.  
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### 23 **III. CONCLUSION**

24 The statutorily authorized deductions from plaintiff's earnings and other incoming funds do not  
25 violate his substantive due process rights. These deductions do not "shock[] the universe of justice."  
26 RCW 72.09 is presumed constitutional, and plaintiff's allegation that Washington has no rational basis  
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1 for the deductions is conclusory and unsupported by evidence. Nor do the deductions violate  
2 plaintiff's Eighth Amendment rights.

3  
4 While plaintiff appears to have a property interest in his funds and the deductions deprive him  
5 of those funds, he offers no evidence establishing a lack of procedural due process. To the contrary,  
6 the evidence presented establishes that plaintiff has post-deprivation procedures (prison grievance  
7 process) available to him which provide adequate procedural due process. The evidence documents  
8 his participation in the process. Also, he has tort and breach of contract remedies available to him in  
9 state court. He makes no argument as to why the post-deprivation procedures available are inadequate  
10 or why the court should distinguish his case from those cases which hold post-deprivation due process  
11 is sufficient.  
12

13  
14 Where it is apparent from the records, files, affidavits and documents presented that there is no  
15 genuine dispute respecting essential material facts, the court may grant summary judgment *sua sponte*  
16 for the non-moving party. Cool Fuel, Inc. v. Connett, 685 F. 2d 309, 311 (9<sup>th</sup> Cir. 1982) (citations  
17 omitted). Here, it is undisputed that statutorily authorized deductions are being made from plaintiff's  
18 funds. It appears that plaintiff has presented all of his evidence and that there is no other material  
19 evidence which could be gathered through the discovery process. As discussed above, the deductions  
20 do not result in any federal constitutional violations. Accordingly, awarding summary judgment to  
21 defendants *sua sponte* is appropriate.  
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23  
24 **IT IS ORDERED:**

- 25 1) Plaintiff's Motion for Summary Judgment (Ct. Rec. 10) is **DENIED**;
- 26 2) Defendants are awarded summary judgment on all of plaintiff's 42 U.S.C. §1983  
27 claims.  
28

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3) The District Court Executive is directed to file this Order and provide a copy to plaintiff and to counsel for defendants. Judgment shall be entered for defendants and the file shall be

**CLOSED.**

**DATED** this 16<sup>th</sup> of August 2005.

s/ Alan A. McDonald

ALAN A. McDONALD

Senior United States District Judge